

Apr 10, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSHUA JAMES F.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 1:18-CV-03114-JTR

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

BEFORE THE COURT are cross-motions for summary judgment. ECF No. 12, 13. Attorney D. James Tree represents Joshua James F. (Plaintiff); Special Assistant United States Attorney Michael Sinclair Howard represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

JURISDICTION

On February 17, 2015, Plaintiff filed an application for a period of disability and Disability Insurance Benefits, Tr. 15, 195-201, and an application for Supplemental Security Income benefits, Tr. 15, 202-209. Plaintiff alleged a disability onset date of August 31, 2013, Tr. 15, 202, 220, due to Anxiety, Bilateral Hand and Finger Numbness, Herniated Discs Neck and Back, Spinal Stenosis/Bone Spurs, Left Shoulder Pain, Sleep Disturbance, Depression, and

1 Memory Loss. Tr. 224. Plaintiff's applications were denied initially and upon
2 reconsideration.

3 Administrative Law Judge (ALJ) M.J. Adams held a hearing on February
4 28, 2017, Tr. 37-57, and issued an unfavorable decision on May 17, 2017. Tr. 15-
5 25. The Appeals Council denied review on April 16, 2018. Tr. 1-6. The ALJ's
6 May 17, 2017, decision thus became the final decision of the Commissioner, which
7 is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this
8 action for judicial review on June 29, 2018. ECF No. 1.

9 **STATEMENT OF FACTS**

10 The facts of the case are set forth in the administrative hearing transcript, the
11 ALJ's decision, and the briefs of the parties. They are only briefly summarized
12 here.

13 Plaintiff was born on November 16, 1977 and was 35 years old on the
14 alleged disability onset date, August 31, 2013. Tr. 40, 220. Plaintiff has a General
15 Education Diploma (GED). Tr. 40. He has worked as a bartender, deli manager,
16 and food sales clerk. Tr. 20, 41-42.

17 Plaintiff's disability report indicates he stopped working because of his
18 conditions on August 31, 2013. Tr. 224. He testified that he is unable to do any of
19 his past jobs because of chronic pain, anxiety, and issues with his hands, shoulder,
20 and neck. Tr. 20, 42, 250. Plaintiff reported that his back pain began when he was
21 involved in a car accident in September 2005, and the pain has progressively
22 gotten worse. Tr. 42, 426, 535, 648, 657, 706, 762. Plaintiff reported having
23 upper and lower back pain since the car accident. Tr. 426. He reported a lot of
24 stiffness and spasm in his back, and numbness and tingling in both legs. Tr. 426.

25 At the hearing, Plaintiff testified that he is unable to carry a 20-pound
26 weight. Tr. 20, 43. He stated that doing so would exacerbate his pain and
27 radicular symptoms. Tr. 20, 43. Plaintiff testified that numbness and pain prevent
28 him from manipulating objects and closing his hands into a fist. Tr. 20, 43-44. He

1 stated that he has received injections in his neck but has not been referred for
2 surgery. Tr. 20, 45-46.

3 Plaintiff also alleges that he has anxiety issues, major depression, and audio
4 and visual hallucinations. Tr. 20, 47, 250. He testified that he has been battling
5 depression since he was a teenager. Tr. 48. Plaintiff testified that he began taking
6 medication a couple of years before the administrative hearing to help with pain
7 and depression, and it seemed to help a little bit. Tr. 49. He also testified that he
8 has anxiety attacks when around groups of people. Tr. 20, 49-50.

9 Plaintiff reported that he lives in a shelter or with friends when he can, and
10 he sometimes lives with friends outside in a tent. Tr. 250, 657. Plaintiff has two
11 children who are not in his custody. Tr. 426, 494, 516, 535, 653. He reported that
12 he goes outside every day and tries to walk and stretch. Tr. 253, 494. He travels
13 by walking, riding in a car, or using public transportation. Tr. 253. He reported
14 that his hobbies are watching television, using the internet, reading books, and
15 walking. Tr. 254, 494. Plaintiff reported that he attends church every week, but
16 often has to leave early, and he attends Alcoholics Anonymous meetings. Tr. 254,
17 666.

18 Plaintiff reported being able to care for his hygiene needs, including taking
19 regular baths and/or showers, brushing his teeth and combing his hair. Tr. 494. He
20 generally takes his own medication and is able to renew his prescriptions as
21 needed. Tr. 494. He typically schedules his own appointments with doctors or
22 other offices. Tr. 494. Plaintiff reported that he prepares meals weekly with help.
23 Tr. 252, 494. He reported that he shops in stores once or twice a month and tries to
24 shop fast because it hurts and he has a lot of anxiety. Tr. 253, 494. He is able to
25 perform household chores independently and whenever necessary, including
26 washing dishes, doing laundry, vacuuming, and dusting. Tr. 494.

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STANDARD OF REVIEW

The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational interpretation, the Court may not substitute its judgment for that of the ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or if conflicting evidence supports a finding of either disability or non-disability, the ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be set aside if the proper legal standards were not applied in weighing the evidence and making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

SEQUENTIAL EVALUATION PROCESS

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a), 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the burden of proof rests upon the claimant to establish a prima facie case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a claimant establishes that a physical or mental impairment prevents the

1 claimant from engaging in past relevant work. 20 C.F.R. §§ 404.1520(a)(4),
2 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds
3 to step five, and the burden shifts to the Commissioner to show that the claimant
4 can perform other jobs present in significant numbers in the national economy.
5 *Batson v. Commissioner of Soc. Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If
6 a claimant cannot make an adjustment to other work in the national economy, a
7 finding of “disabled” is made. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

8 ADMINISTRATIVE DECISION

9 On May 17, 2017, the ALJ issued a decision finding Plaintiff was not
10 disabled as defined in the Social Security Act.

11 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
12 activity since the alleged onset date, August 31, 2013. Tr. 17.

13 At step two, the ALJ determined Plaintiff had the following severe
14 impairments: degenerative disc disease, obesity, affective disorder, and anxiety
15 disorder. Tr. 17.

16 At step three, the ALJ found Plaintiff did not have an impairment or
17 combination of impairments that meets or medically equals the severity of one of
18 the listed impairments. Tr. 17.

19 The ALJ assessed Plaintiff’s Residual Functional Capacity (RFC) and
20 determined that he could perform light work with the following limitations: he can
21 lift and carry 20 pounds occasionally and 10 pounds frequently; can stand and/or
22 walk for six hours in an eight-hour workday and sit for six hours in an eight-hour
23 workday; can occasionally climb ladders, ropes, or scaffolds, crouch, and stoop,
24 and can frequently crawl; must avoid concentrated exposure to vibration,
25 hazardous machinery, and unprotected heights; can understand, remember, and
26 carry out simple instructions; can make judgments commensurate with the
27 functions of unskilled work, i.e., work that needs little or no judgment to do simple
28 duties and a person can usually learn to do in 30 days, and little specific vocational

1 preparation and judgment are needed; can respond appropriately to supervision, but
2 should not be required to work in close coordination with co-workers where
3 teamwork is required; can deal with occasional changes in the work environment;
4 and can do work that requires no contact with the general public to perform the
5 work tasks. Tr. 19.

6 At step four, the ALJ determined Plaintiff was not able to perform his past
7 relevant work. Tr. 24.

8 At step five, the ALJ determined that, considering Plaintiff's age, education,
9 work experience and RFC, and based on the testimony of the vocational expert
10 (VE), Plaintiff could perform other jobs present in significant numbers in the
11 national economy, including the light exertion level jobs of cleaner, housekeeping;
12 production assembler; and hand packager. Tr. 24-25. The ALJ thus concluded
13 that Plaintiff was not under a disability within the meaning of the Social Security
14 Act from August 31, 2013, through the date of the ALJ's decision, May 17, 2017.
15 Tr. 25.

16 ISSUES

17 The question presented is whether substantial evidence supports the ALJ's
18 decision denying benefits and, if so, whether that decision is based on proper legal
19 standards. Plaintiff contends the ALJ erred by (1) improperly discrediting
20 Plaintiff's symptom claims; and (2) failing to properly consider and weigh the
21 opinion evidence. ECF No. 12 at 2.

22 DISCUSSION¹

23
24 ¹ In *Lucia v. S.E.C.*, 138 S.Ct. 2044 (2018), the Supreme Court recently held
25 that ALJs of the Securities and Exchange Commission are "Officers of the United
26 States" and thus subject to the Appointments Clause. To the extent *Lucia* applies
27 to Social Security ALJs, the parties have forfeited the issue by failing to raise it in
28 their briefing. See *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1161

1 **A. Plaintiff’s Symptom Testimony**

2 Plaintiff contends the ALJ erred by improperly discrediting his symptom
3 complaints. ECF No. 12 at 4-14. It is the province of the ALJ to make credibility
4 determinations. *Andrews*, 53 F.3d at 1039. In considering Plaintiff’s symptoms,
5 the ALJ must follow a two-step analysis. *Lingerfelter v. Astrue*, 504 F.3d 1028,
6 1035-36 (9th Cir. 2007). First, the ALJ must determine whether there is objective
7 evidence of an underlying impairment that could reasonably be expected to
8 produce Plaintiff’s pain or other symptoms. *Id.* at 1036 (quotation omitted).
9 “Second, if the claimant meets this first test, and there is no evidence of
10 malingering, ‘the ALJ can reject the claimant’s testimony about the severity of her
11 symptoms only by offering specific, clear and convincing reasons for doing so.’”
12 *Id.*; citing *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996). “General findings
13 are insufficient: rather, the ALJ must identify what testimony is not credible and
14 what evidence undermines the claimant’s complaints.” *Lester v. Chater*, 81 F.3d
15 821, 834 (9th Cir. 1996); *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

16 In this case, the ALJ found that Plaintiff’s medically determinable
17 impairments could possibly produce the alleged symptoms, however, Plaintiff’s
18 statements concerning the intensity, persistence, and limiting effects of these
19 symptoms were not entirely consistent with the objective medical and other
20 evidence. Tr. 20. The ALJ recounted the following reasons for discrediting
21 Plaintiff’s symptom testimony: (i) inconsistencies with the medical evidence; (ii)
22 inconsistencies with Plaintiff’s activities of daily living; and (iii) Plaintiff engaged
23 in negative impression management during a benefits evaluation. Tr. 20-22. The
24 ALJ provided specific examples of each. *Id.*

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27 n.2 (9th Cir. 2008) (the Court will not consider matters on appeal that were not
28 specifically addressed in an appellant’s opening brief).

1 **1. Inconsistent with Medical Evidence**

2 The ALJ found that the medical evidence in the record did not substantiate
3 Plaintiff's allegations of disabling symptoms. Tr. 20-21. An ALJ may, with clear
4 and convincing reasons, discount the claimant's statements if not fully supported
5 by objective evidence. *Carmickle*, 533 F.3d at 1160. These reasons need only be
6 supported by substantial evidence. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th
7 Cir. 2001). "While subjective pain testimony cannot be rejected on the sole ground
8 that it is not fully corroborated by objective medical evidence, the medical
9 evidence is still a relevant factor in determining the severity of the claimant's pain
10 and its disabling effects." *Id.*, citing 20 C.F.R. 404.1529(c)(2).

11 Plaintiff alleged that his ability to use his hands was severely limited. Tr.
12 21, 43-44. He testified that he could not reasonably lift or carry a 20-pound
13 weight. Tr. 43. However, the ALJ determined that the medical evidence in the
14 record did not support the level of impairment alleged. Tr. 20-21; *see, e.g.*, Tr.
15 745-46 (Plaintiff reported in August 2015 that he could lift up to 20 to 30 pounds,
16 stand up to 60 minutes, sit for up to 60 minutes, and walk up to half a mile); Tr.
17 746 (examination found normal lumbar flexion but limited extension and lateral
18 flexion); Tr. 613, 620, 633; 711-12 (examinations in October 2015, July and
19 October 2016, and January 2017 found intact upper and lower extremity strength,
20 sensation, and reflexes).

21 Plaintiff reported severe back and neck pain. Tr. 21, 454-56. However, the
22 ALJ found that the record evidence conflicted with Plaintiff's assertion that his
23 back and neck pain limited his ability to walk and move around. Tr. 21.
24 Examination showed that Plaintiff moved easily and had normal muscle bulk and
25 tone. Tr. 456. In April 2016, Plaintiff had limited lumbar range of motion, but
26 otherwise showed normal gait and good mobility. Tr. 728, 735. An examination
27 in January 2017 found that Plaintiff ambulated without assistance, had intact
28 shoulder range of motion, and no muscle atrophy. Tr. 711-12.

1 The ALJ acknowledged that the record included findings of tenderness to
2 palpation of Plaintiff's cervical and lumbar spine, Tr. 21 (citing Tr. 613, 620, 633),
3 and a nerve conduction velocity (NCV) study in January 2016 revealed findings
4 consistent with mid-cervical spine nerve irritation and mild carpal tunnel
5 syndrome, Tr. 21 (citing Tr. 765-67). However, the ALJ found that these mild to
6 moderate findings did not outweigh the numerous findings in the record showing
7 that Plaintiff's symptoms were not as limiting as he alleged. Tr. 21. The ALJ
8 noted that objective medical findings, including imaging studies, were inconsistent
9 with Plaintiff's allegations of disability. Tr. 21; *see, e.g.*, Tr. 531 (April 2015: MRI
10 scan showed a lumbar disc herniation and degeneration at two levels but no nerve
11 root impingement); Tr. 570 (April 2015: x-ray showed mild arthritic changes in
12 Plaintiff's neck); Tr. 613 (October 2016: straight leg raising tests were negative);
13 Tr. 711-12 (November 2016: MRI scan showed mild to moderate degeneration and
14 stenosis of the cervical spine).

15 Plaintiff alleged that his depression and anxiety symptoms limited his ability
16 to concentrate and be around others. Tr. 21, 49, 254-55. However, the ALJ
17 determined that the record failed to show that Plaintiff's symptoms would prevent
18 him from working within the parameters of the residual functional capacity. Tr.
19 21-22; *see, e.g.*, Tr. 456 (November 2014: Plaintiff showed normal memory and
20 judgment and normal mood and affect); Tr. 516 (March 2015: Plaintiff reported
21 episodic anxiety and depression due to his living situation, and examination noted
22 mild symptoms); Tr. 653-55 (March 2016: Plaintiff reported problems with
23 impaired concentration, low interest, and low energy with racing thoughts, but
24 mental status examination was within normal limits, with adequate attention and
25 fair eye contact); Tr. 684, 687, 693, 698, 701, 704, 708 (records show that Plaintiff
26 was pleasant and cooperative, normal psychomotor activity, normal speech,
27 adequate attention in March, April, May, June, July, August, October 2016, despite
28

1 his reports of irritability, paranoia, and hallucinations); Tr. 681 (December 2016:
2 Plaintiff showed adequate attention, fair eye contact, and normal speech).

3 Plaintiff reported that audio hallucinations interfered with his ability to
4 work. Tr. 250. However, as determined by the ALJ, the record contained only
5 sporadic reports of these symptoms and did not indicate that hallucinations
6 compromised his functioning. Tr. 22. In March 2014, Plaintiff denied disturbing
7 thoughts, memory loss, nervousness, hallucinations, psychiatric disorders, and
8 excessive stress. Tr. 479. In April 2015, Plaintiff did not report hallucinations
9 when seeking treatment for mental symptoms. Tr. 555. In a Patient Health
10 Questionnaire completed in April 2015, Plaintiff denied problems with
11 concentration, getting along with others, or difficulty working, Tr. 556, and he
12 showed appropriate mood and affect, as well as normal memory, Tr. 559.

13 The ALJ reasonably concluded, based on this record, that the medical
14 evidence did not support the level of impairment alleged by Plaintiff. Tr. 20-21.
15 This was a proper basis for the ALJ to discredit Plaintiff's symptom testimony.
16 *Parra v. Astrue*, 481 F.3d 742, 750-51 (9th Cir. 2007); *Rollins*, 261 F.3d at 857.

17 **2. Inconsistent with Activities of Daily Living**

18 As determined by the ALJ, Plaintiff has shown that he is able to engage in a
19 variety of activities that are inconsistent with his alleged limitations. Tr. 22. It is
20 well-established that the nature of daily activities may be considered when
21 evaluating credibility. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). While
22 one does not need to be "utterly incapacitated" to be disabled, *id.*, it was proper for
23 the ALJ to find Plaintiff's reports of activities (ability to go on walks, use public
24 transportation, read "a lot," attend church and Alcoholics Anonymous meetings,
25 wash dishes, do laundry, vacuum, clean, and grocery shop, Tr. 253-54, 494), were
26 inconsistent with the limitations Plaintiff alleged, and detracted from his overall
27 credibility. *See Molina v. Astrue*, 674 F.3d 1104, 1113 (9th Cir. 2012) ("Even
28 where [a claimant's daily] activities suggest some difficulty functioning, they may

1 be grounds for discrediting the claimant's testimony to the extent that they
2 contradict claims of a totally debilitating impairment."); *see also Morgan*, 169 F.3d
3 at 599-600, 603 (affirming the ALJ's adverse determination regarding symptom
4 testimony and noting that evidence of the claimant's daily activities, such as the
5 ability to fix meals, do laundry, work in the yard, and occasionally care for his
6 friend's child, served as evidence of his ability to work); *Rollins*, 261 F.3d at 857
7 (affirming the ALJ's adverse determination regarding symptom testimony and
8 noting that the claimant's allegation of disability was undermined by testimony
9 about her daily activities, such as attending to the needs of her two young children,
10 cooking, and shopping).

11 **3. Negative Impression Management**

12 The ALJ found that the evidence suggested Plaintiff engaged in negative
13 impression management during a benefits evaluation, which called into question
14 the veracity of his allegations. Tr. 22. The tendency to exaggerate provides a
15 permissible reason for discounting a claimant's reported symptoms. *See*
16 *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001) (the ALJ appropriately
17 considered the claimant's tendency to exaggerate when assessing the claimant's
18 credibility, which was shown in a doctor's observation that Plaintiff was
19 uncooperative during cognitive testing but was "much better" when giving reasons
20 for being unable to work.).

21 During a February 2015 Department of Social and Health Services (DSHS)
22 benefits evaluation conducted by psychologist Dr. Genthe, Plaintiff showed "subtle
23 suggestions that [he] attempted to portray himself in a negative or pathological
24 manner in particular areas." Tr. 499. Dr. Genthe also noted "[s]ome concern
25 about distortion of the clinical picture must be raised as a result; [Plaintiff] presents
26 with certain patterns or combinations of features that are unusual or atypical in
27 clinical populations but relatively common among individuals feigning mental
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1 disorder.” Tr. 499. The ALJ found that this observation diminished the
2 persuasiveness of Plaintiff’s allegations. Tr. 22.

3 The ALJ is responsible for reviewing the evidence and resolving conflicts or
4 ambiguities in testimony. *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir.
5 1989). It is the role of the trier of fact, not this Court, to resolve conflicts in
6 evidence. *Richardson*, 402 U.S. at 399-400 (1971). The Court has a limited role
7 in determining whether the ALJ’s decision is supported by substantial evidence
8 and may not substitute its own judgment for that of the ALJ even if it might
9 justifiably have reached a different result upon *de novo* review. 42 U.S.C. §
10 405(g). After reviewing the record, the Court finds that the ALJ provided clear
11 and convincing reasons, which are fully supported by the record, for discounting
12 Plaintiff’s subjective complaints. Accordingly, the ALJ did not err by finding
13 Plaintiff’s symptom allegations were not entirely credible in this case.

14 **B. Medical Source Opinions**

15 Plaintiff argues that the ALJ erred by improperly according more weight to
16 the reviewing opinion of Dr. Ignacio than treating provider Dr. Crank regarding
17 Plaintiff’s physical limitations, and by assigning more weight to the psychological
18 reviewers than examining provider Dr. Genthe. ECF No. 12 at 14-21.

19 In weighing medical source opinions in a disability proceeding, the courts
20 distinguish among the opinions of three types of acceptable medical sources: (i)
21 treating physicians, who actually treat the claimant; (ii) examining physicians, who
22 examine but do not treat the claimant; and (iii) non-examining physicians, who
23 neither treat nor examine the claimant. *Lester*, 81 F.3d at 830. An opinion of a
24 treating physician is given more weight than the opinion of a non-treating
25 physician. *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). An examining
26 physician’s opinion is given more weight than that of a non-examining physician’s
27 opinion. *Benecke v. Barnhart*, 379 F.3d 587, 592 (9th Cir. 2004); *Lester*, 81 F.3d
28 at 830. If the ALJ rejects a treating or examining physician’s opinion that is

1 contradicted by another doctor, he must provide specific, legitimate reasons based
2 on substantial evidence in the record. *Valentine v. Comm’r of Soc. Sec. Admin.*,
3 574 F.3d 685, 692 (9th Cir. 2009). The ALJ is required to set forth the reasoning
4 behind his or her decisions in a way that allows for meaningful review. *Brown-*
5 *Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) (finding a clear statement of
6 the agency’s reasoning is necessary because the Court can affirm the ALJ’s
7 decision to deny benefits only on the grounds invoked by the ALJ). “Although the
8 ALJ’s analysis need not be extensive, the ALJ must provide some reasoning in
9 order for us to meaningfully determine whether the ALJ’s conclusions were
10 supported by substantial evidence.” *Treichler v. Comm’r of Soc. Sec. Admin.*, 775
11 F.3d 1090, 1103 (9th Cir. 2014).

12 **1. Plaintiff’s Physical Limitations**

13 On April 2, 2015, treating physician Jeremiah Crank, M.D. completed a
14 Physical Functional Evaluation and opined that Plaintiff was unable to meet the
15 demands of sedentary work. Tr. 507-511. Dr. Crank diagnosed neck and low back
16 pain, degenerative disc disease, concern about a herniated disc, and nerve
17 compression. Tr. 508. He estimated the limitation on Plaintiff’s work activities
18 would persist with available medical treatment for 12 months. Tr. 509.

19 The ALJ assigned little weight to Dr. Crank’s opinion. Tr. 23. The ALJ
20 determined that Dr. Crank’s own examination findings were out of proportion with
21 the severe limitations that he attributed to Plaintiff. Tr. 23. This was a specific and
22 legitimate reason to reject Dr. Crank’s opinion regarding Plaintiff’s limitations.
23 *See Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (holding that the
24 existence of internal inconsistencies within a physician’s opinion constitutes a
25 specific and legitimate reason for the ALJ to reject that physician’s opinion
26 concerning the claimant’s functional limitations). The ALJ specifically cited Dr.
27 Crank’s range of motion testing which showed essentially intact back mobility and
28 minor limitations of Plaintiff’s neck movement. Tr. 23 (citing Tr. 574-75). The

1 ALJ also cited Dr. Crank's examination findings that Plaintiff exhibited normal
2 upper and lower extremity strength and sensation. Tr. 23 (citing Tr. 580). These
3 findings are inconsistent with Dr. Crank's opinion that Plaintiff's neck and back
4 pain would prevent him from performing even sedentary work.

5 Further, the ALJ found Dr Crank's conclusion that Plaintiff had severe
6 limitations with walking conflicted with Plaintiff's repeated reports that he spent
7 time going on walks. Tr. 23 (citing Tr. 253-54, 494, 572). *See Morgan*, 169 F.3d
8 at 600-02 (considering an inconsistency between a treating physician's opinion and
9 a claimant's reported daily activities is a specific and legitimate reason to discount
10 the treating physician's opinion). A review of the record reveals several reports by
11 Plaintiff that he spends time going on walks, he walks as a method of
12 transportation, and he tries to incorporate walks into his daily routine. *See* Tr. 253
13 (Plaintiff reported that he goes outside "everyday [to] try to walk and stretch"); Tr.
14 253 (Plaintiff reported that he travels by walking, using public transportation, and
15 riding in a car); Tr. 494 (Plaintiff reported that his general activities include going
16 for walks); Tr. 50 (Plaintiff testified that he tries to get out everyday and "at least
17 try to walk a little bit"). These reports are inconsistent with Dr. Crank's opinion
18 that Plaintiff has severe walking limitations. Tr. 572.

19 The Court finds the severe physical limitations assessed by Dr. Crank are
20 inconsistent with his own examination findings and Plaintiff's reports that he spent
21 time going on walks, and the ALJ provided specific and legitimate reasons,
22 supported by substantial evidence, for according little weight to Dr. Crank's
23 limitations.

24 On June 4, 2015, Olegario Ignacio, Jr., M.D. reviewed the record and opined
25 that Plaintiff could perform light work with the additional restrictions stated in the
26 residual functional capacity. Tr. 103-117.

27 The ALJ assigned great weight to Dr. Ignacio's opinion. Tr. 23. The ALJ
28 found that Dr. Ignacio's assessment was consistent with the objective medical

evidence, the observations of treatment providers, and Plaintiff's reported activities. Tr. 23. The ALJ also noted that the evidence added to the record after Dr. Ignacio's review did not objectively establish the presence of more significant functional limitations. Tr. 23.

It is the responsibility of the ALJ to determine credibility, resolve conflicts in medical testimony, and resolve ambiguities, *Saelee v. Chater*, 94 F.3d 520, 522 (9th Cir. 1996), and this Court may not substitute its own judgment for that of the ALJ. 42 U.S.C. § 405(g). Where, as here, the ALJ has made specific findings justifying a decision, and those findings are supported by substantial evidence in the record, this Court's role is not to second-guess that decision. *Fair*, 885 F.2d at 604.

2. Plaintiff's Mental Limitations

On February 25, 2015, examining psychologist Thomas Genthe, Ph.D., completed a Psychological/Psychiatric Evaluation. Tr. 493-501. Dr. Genthe concluded that Plaintiff presented with primary mental health claims as the reason for his current unemployment. Tr. 496. He opined that Plaintiff's psychological symptoms appeared to have considerably impacted his daily activities and level of functioning necessary to move forward and pursue gainful employment or continue his education. Tr. 496. Dr. Genthe found that Plaintiff's symptoms were not being managed at the time of the evaluation. Tr. 496. He recommended that Plaintiff be referred for a psychiatric consultation to review his regimen and dosages for effectiveness. Tr. 496. He also recommended a referral for individual counseling services in attempts to target recent familial issues and psychosocial stressors that appeared to be contributing to Plaintiff's current level of distress. Tr. 496.

Dr. Genthe assessed Plaintiff's ability to interact appropriately with the public in everyday situations as fair. Tr. 496. His ability to get along with coworkers and/or peers was assessed as poor. Tr. 496. His ability to respond appropriately to criticism from supervisors was assessed as poor. Tr. 496.

1 Plaintiff's prognosis was viewed as guarded. Tr. 496. Dr. Genthe determined that,
2 at the time of the evaluation, Plaintiff was unlikely to function adequately in a
3 work setting until his psychological symptoms had been managed more effectively.
4 Tr. 496. He noted that, given Plaintiff's response to treatment and willing
5 participation, a period of six to nine months may likely be sufficient to address his
6 treatment needs at least moderately well, and help him regain the necessary
7 emotional functioning to resume fulltime work-related activities. Tr. 496.

8 The ALJ gave little weight to Dr. Genthe's opinion. Tr. 23. The ALJ
9 determined that the limitations set forth by Dr. Genthe: (i) were inconsistent with
10 the medical evidence of record; (ii) were inconsistent with Dr Genthe's own
11 observations; (iii) relied heavily on Plaintiff's subjective reports; and (iv) were
12 contradicted by Plaintiff's own allegations. Tr. 23.

13 In finding that Dr. Genthe's opinion was inconsistent with the medical
14 evidence of record, the ALJ cited to the medical evidence discussed in the decision
15 which showed that Plaintiff's symptoms were generally mild to moderate and did
16 not cause marked functional limitations. Tr. 23. An ALJ may discredit a
17 physician's opinions that are unsupported by the record as a whole. *Batson*, 359
18 F.3d at 1195. As discussed *supra*, Plaintiff's objective imaging and physical
19 examinations yielded results that were consistent with the ALJ's RFC formulation.
20 *See* Tr. 456 (November 2014: Plaintiff showed normal memory and judgment and
21 normal mood and affect); Tr. 516 (March 2015: Plaintiff reported episodic anxiety
22 and depression due to his living situation, and examination noted mild symptoms);
23 Tr. 653-55 (March 2016: Plaintiff reported problems with impaired concentration,
24 low interest, and low energy with racing thoughts, but mental status examination
25 was within normal limits, with adequate attention and fair eye contact); Tr. 684,
26 687, 693, 698, 701, 704, 708 (records show that Plaintiff was pleasant and
27 cooperative, normal psychomotor activity, normal speech, adequate attention in
28 March, April, May, June, July, August, October 2016, despite his reports of

1 irritability, paranoia, and hallucinations); Tr. 681 (December 2016: Plaintiff
2 showed adequate attention, fair eye contact, and normal speech); Tr. 479 (March
3 2014: Plaintiff denied disturbing thoughts, memory loss, nervousness,
4 hallucinations, psychiatric disorders, and excessive stress). This inconsistency
5 with the medical evidence was a specific and legitimate reason to discredit Dr.
6 Genthe's opinion.

7 Further, the ALJ found that Dr. Genthe's opinion was inconsistent with his
8 own observations. Tr. 23 (citing Tr. 497-98). The existence of internal
9 inconsistencies within a physician's opinion constitutes a specific and legitimate
10 reason for the ALJ to reject that physician's opinion concerning the claimant's
11 functional limitations. *Tommasetti*, 533 F.3d at 1041. The ALJ specifically cited
12 Dr. Genthe's examination of Plaintiff, which showed normal mental status and
13 normal behavior. Tr. 23 (citing Tr. 497-98). Dr. Genthe's assessed marked
14 difficulties with completing a normal work day and work week without
15 interruption and with maintaining appropriate workplace behavior were thus
16 inconsistent with his own examination findings. This was a specific and legitimate
17 reason to reject Dr. Genthe's opinion regarding Plaintiff's limitations.

18 The ALJ determined that Dr. Genthe relied heavily on Plaintiff's subjective
19 reports, which Dr. Genthe noted were not entirely reliable. Tr. 23 (citing Tr. 499).
20 As discussed *supra*, the ALJ properly discounted Plaintiff's symptom testimony.
21 "An ALJ may reject a treating physician's opinion if it is based 'to a large extent'
22 on a claimant's self-reports that have been properly discounted as incredible."
23 *Tommasetti*, 533 F.3d at 1041. A review of Dr. Genthe's
24 Psychological/Psychiatric Evaluation reveals that it largely reflects Plaintiff's
25 reports of limitations, with little independent analysis or diagnosis. Tr. 493-501.
26 Reliance on Plaintiff's self-reported symptoms rather than the doctor's
27 examination findings constituted a specific and legitimate reason for the ALJ to
28 reject Dr. Genthe's opinion regarding Plaintiff's limitations.

1 Finally, the ALJ determined that some of Dr. Genthe's opinions, including
2 his assertion that Plaintiff had poor ability to get along with co-workers and
3 supervisors, were contradicted by Plaintiff's own allegations. Tr. 23 (citing Tr.
4 255, 496). As discussed *supra*, an ALJ may reject limitations "unsupported by the
5 record as a whole." *Batson*, 359 F.3d at 1195. In his Adult Function Report,
6 Plaintiff reported that he had no problems getting along with family, friends,
7 neighbors, or others, Tr. 255, but Dr. Genthe opined that Plaintiff's ability to get
8 along with coworkers, peers, and to respond appropriately to criticism from
9 supervisors was poor, Tr. 496. This constituted a specific and legitimate reason to
10 discount Dr. Genthe's opinion about Plaintiff's poor ability to get along with co-
11 workers and supervisors.

12 Overall, Dr. Genthe's assessment of Plaintiff was inconsistent with the
13 record evidence, and the ALJ gave his opinions little weight. Tr. 23.

14 In April and June 2015, state agency mental health reviewers Thomas
15 Clifford, Ph.D., and Renee Eisenhauer, Ph.D. completed mental health
16 assessments. Tr. 23 (citing Tr. 60-72, 103-114). They found that Plaintiff could
17 perform simple and well-learned complex tasks and had moderate limitations of his
18 ability to interact with others. Tr. 23, 69, 112-13.

19 The ALJ accorded some weight to the opinions of the state agency mental
20 health assessors. Tr. 23. The ALJ found that their opinions were generally
21 consistent with the evidence of record, although the ALJ found that Plaintiff was
22 limited to simple tasks and unskilled work. Tr. 23. The ALJ also determined the
23 opinion that Plaintiff was "moderately limited" in various functional categories
24 was vague and did not provide a specific functional limitation. Tr. 23, 68-69, 113.

25 It is the responsibility of the ALJ to determine credibility, resolve conflicts
26 in medical testimony, and resolve ambiguities, *Saelee*, 94 F.3d at 522, and this
27 Court may not substitute its own judgment for that of the ALJ. 42 U.S.C. § 405(g).
28 Where, as here, the ALJ has made specific findings justifying a decision, and those

1 findings are supported by substantial evidence in the record, this Court's role is not
2 to second-guess that decision. *Fair*, 885 F.2d at 604.

3 Having reviewed the ALJ's evaluation of the medical evidence, the Court
4 finds the ALJ's interpretation was based on substantial evidence, and the ALJ
5 supported the findings with specific and legitimate reasoning.

6 **CONCLUSION**

7 Having reviewed the record and the ALJ's findings, the Court finds the
8 ALJ's decision should be affirmed. Therefore, **IT IS HEREBY ORDERED:**

9 1. Defendant's Motion for Summary Judgment, **ECF No. 13**, is
10 **GRANTED.**

11 2. Plaintiff's Motion for Summary Judgment, **ECF No. 12**, is **DENIED.**

12 The District Court Executive is directed to file this Order and provide a copy
13 to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant
14 and the file shall be **CLOSED.**

15 DATED April 10, 2019.



A handwritten signature in black ink, appearing to be "M" or "Rodgers", written over a horizontal line.

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE